

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

In re FINISAR CORPORATION
SECURITIES LITIGATION

Case No. 5:11-CV-01252-EJD

CLASS ACTION

~~PROPOSED~~ FINAL ORDER AND
JUDGMENT

Hon. Edward J. Davila

1 WHEREAS, Lead Plaintiff Oklahoma Firefighters Pension and Retirement System
2 (“Lead Plaintiff”), on behalf of itself and the Settlement Class (defined below), and defendants
3 Finisar Corporation (“Finisar”), Jerry S. Rawls, and Eitan Gertel (collectively, the “Defendants,”
4 and together with Lead Plaintiff, the “Parties”) have entered into a Stipulation and Agreement of
5 Settlement dated July 8, 2020 (the “Stipulation”), that provides for a complete dismissal with
6 prejudice of the Released Claims on the terms and conditions set forth in the Stipulation, subject
7 to the approval of this Court (the “Settlement”);

8 WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall
9 have the same meaning as they have in the Stipulation;

10 WHEREAS, by Order dated October 1, 2020 (the “Preliminary Approval Order”), this
11 Court: (a) preliminarily approved the Settlement; (b) certified the Settlement Class solely for
12 purposes of effectuating the Settlement; (c) ordered that notice of the proposed Settlement be
13 provided to potential Settlement Class Members; (d) provided Settlement Class Members with
14 the opportunity either to exclude themselves from the Settlement Class or to object to the
15 proposed Settlement; and (e) scheduled a hearing regarding final approval of the Settlement;

16 WHEREAS, due and adequate notice has been given to the Settlement Class;

17 WHEREAS, the Court conducted a hearing on February 11, 2021 (the “Settlement
18 Hearing”) to consider, among other things, (a) whether the terms and conditions of the
19 Settlement are fair, reasonable, and adequate to the Settlement Class, and should therefore be
20 approved; and (b) whether a judgment should be entered dismissing the Action with prejudice as
21 against the Defendants; and

22 WHEREAS, the Court having reviewed and considered the Stipulation, all papers filed,
23 and proceedings held herein in connection with the Settlement, all oral and written comments
24 received regarding the Settlement, and the record in the Action, and good cause appearing
25 therefor;

26 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

27 1. This Court has jurisdiction over the subject matter of the Action and over all
28 Parties to the Action, including members of the Settlement Class.

1 2. This Judgment incorporates and makes a part hereof: (a) the Stipulation dated July
2 8, 2020; and (b) the Notice and the Summary Notice, both of which were filed with the Court on
3 July 14, 2020.

4 3. The Court hereby affirms its determinations in the Preliminary Approval Order
5 certifying, for the purposes of the Settlement only, the Action as a class action pursuant to Rules
6 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class
7 consisting of all persons and entities who purchased or acquired the publicly traded common
8 stock of Finisar during the period from December 2, 2010 through March 8, 2011, inclusive (the
9 “Class Period”), and who were allegedly damaged thereby. Excluded from the Settlement Class
10 are: (i) Defendants; (ii) any person who was an officer or director of Finisar during the Class
11 Period; (iii) the Immediate Family Members of all individual persons excluded in (i) or (ii); (iv)
12 the parents, subsidiaries, and affiliates of Finisar; (v) any entity in which any person or entity
13 excluded in (i), (ii), (iii) or (iv) has, or had during the Class Period, a controlling interest; and (vi)
14 the legal representatives, heirs, affiliates, successors, or assigns of any such excluded person or
15 entity. **[Also excluded from the Settlement Class are the persons and entities listed on**
16 **Exhibit 1 hereto who are excluded from the Settlement Class pursuant to their request.]**

17 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes
18 of the Settlement only, the Court hereby affirms its determinations in the Preliminary Approval
19 Order certifying Lead Plaintiff as Class Representative for the Settlement Class and appointing
20 Lead Counsel as Class Counsel for the Settlement Class. Lead Plaintiff and Lead Counsel have
21 fairly and adequately represented the Settlement Class both in terms of litigating the Action and
22 for purposes of entering into and implementing the Settlement and have satisfied the
23 requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

24 5. The form and manner of the Notice of Proposed Settlement of Class Action given
25 to the Settlement Class are hereby determined to have: (a) constituted the best practicable notice
26 under the circumstances, including individual notice to Settlement Class Members who could be
27 identified through reasonable effort, (b) constituted notice that was reasonably calculated, under
28 the circumstances, to apprise Settlement Class Members of the pendency and nature of the

1 Action, of the effect of the Stipulation, including the releases provided for therein, of their right
2 to object to the proposed Settlement, of their right to exclude themselves from the Settlement
3 Class, and of their right to appear at the Settlement Hearing, and (c) fully satisfied all applicable
4 requirements of the Federal Rules of Civil Procedure, the United States Constitution (including
5 the Due Process Clause), Section 21D(a)(7) of the Private Securities Litigation Reform Act of
6 1995, the Rules of the Court, and any other applicable law.

7 6. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby approves the
8 Settlement set forth in the Stipulation as fair, reasonable, and adequate to all Settlement Class
9 Members. The Court further finds that the Settlement is the result of arm's-length negotiations
10 between experienced counsel representing the interests of the Settling Parties. Accordingly, the
11 Court authorizes and directs implementation and performance of all the terms and provisions of
12 the Stipulation, as well as the terms and provisions hereof.

13 7. The Action against Defendants and all Released Claims are hereby DISMISSED
14 in their entirety WITH PREJUDICE.

15 8. The Parties shall bear their own costs and expenses, except otherwise expressly
16 provided in the Stipulation.

17 9. The terms of the Stipulation and of this Judgment shall be forever binding on
18 Defendants, Lead Plaintiff and all other Settlement Class Members (regardless of whether or not
19 any individual Settlement Class Member submits a Claim Form or seeks or obtains a distribution
20 from the Net Settlement Fund), as well as their respective heirs, executors, administrators,
21 predecessors, successors, and assigns in their capacities as such only, and any other person or
22 entity legally entitled to bring Released Plaintiffs' Claims on their behalf in such capacity only.
23 **[The persons and entities listed on Exhibit 1 hereto are excluded from the Settlement Class**
24 **pursuant to request and are not bound by the terms of the Stipulation or this Judgment.]**

25 10. The Releases set forth in paragraphs 4.2 and 4.3 of the Stipulation, together with
26 the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly
27 incorporated herein in all respects. The Releases are effective as of the Effective Date.
28 Accordingly, this Court orders that:

1 (a) Without further action by anyone, and subject to paragraph 11 below, upon the
2 Effective Date of the Settlement, Lead Plaintiff and each of the other Settlement Class Members,
3 on behalf of themselves, and their respective heirs, executors, administrators, predecessors,
4 successors, and assigns in their capacities as such only, and on behalf of any other person or
5 entity legally entitled to bring Released Plaintiffs' Claims on behalf of the respective Settlement
6 Class Member in such capacity only, shall be deemed to have, and by operation of law and of
7 this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved,
8 relinquished, waived, and discharged each and every Released Plaintiffs' Claim against
9 Defendants and the Defendants' Releasees, and shall forever be barred and enjoined from
10 commencing, instituting, maintaining, prosecuting, or continuing to prosecute any or all of the
11 Released Plaintiffs' Claims against any of the Defendants or the Defendants' Releasees. This
12 Release shall not apply to any of the Excluded Plaintiffs' Claims (as that term is defined in
13 paragraph 1.40 of the Stipulation).

14 (b) Without further action by anyone, and subject to paragraph 11 below, upon the
15 Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs,
16 executors, administrators, predecessors, successors, and assigns in their capacities as such only,
17 and on behalf of any other person or entity legally entitled to bring Released Defendants' Claims
18 on behalf of the respective Defendant in such capacity only, shall be deemed to have, and by
19 operation of law and of this Judgment shall have, fully, finally, and forever compromised,
20 settled, released, resolved, relinquished, waived, and discharged each and every Released
21 Defendants' Claim against Plaintiffs and the other Plaintiffs' Releasees, and shall forever be
22 barred and enjoined from commencing, instituting, maintaining, prosecuting, or continuing to
23 prosecute any or all of the Released Defendants' Claims against Plaintiffs or any of the other
24 Plaintiffs' Releasees. This Release shall not apply to any of the Excluded Defendants' Claims (as
25 that term is defined in paragraph 1.39 of the Stipulation).

26 11. Notwithstanding paragraphs 10(a) - (b) above, nothing in this Judgment shall bar
27 any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this
28 Judgment.

1 12. Neither this Judgment, the Stipulation (nor the Settlement contained therein), nor
2 any of its terms and provisions, nor any of the negotiations, documents or proceedings connected
3 with them:

4 (a) is or may be deemed to be, or may be used as an admission, concession, or
5 evidence of, the validity or invalidity of any Released Claims, the truth or falsity of any fact
6 alleged by the Class Representative, the sufficiency or deficiency of any defense that has been or
7 could have been asserted in the Action, or of any wrongdoing, liability, negligence or fault of
8 Defendants, Defendants' Releasees, or each or any of them;

9 (b) is or may be deemed to be or may be used as an admission of, or evidence of, any
10 fault or misrepresentation or omission with respect to any statement or written document
11 attributed to, approved or made by Defendants or Defendants' Releasees in any civil, criminal or
12 administrative proceeding in any court, administrative agency or other tribunal;

13 (c) is or may be deemed to be or shall be used, offered or received against the
14 Settling Parties, the Releasees, or each or any of them, as an admission, concession or evidence
15 of the validity or invalidity of the Released Claims, the infirmity or strength of any claim raised
16 in the Action, the truth or falsity of any fact alleged by the Lead Plaintiff or the Settlement Class,
17 or the availability or lack of availability of meritorious defenses to the claims raised in the
18 Action;

19 (d) is or may be deemed to be or shall be construed as or received in evidence as an
20 admission or concession against Defendants, or Defendants' Releasees, or each or any of them,
21 that any of Plaintiff's or Settlement Class Members' claims are with or without merit, that a
22 litigation class should or should not be certified, that damages recoverable in the Action would
23 have been greater or less than the Settlement Fund or that the consideration to be given pursuant
24 to the Stipulation represents an amount equal to, less than or greater than the amount which
25 could have or would have been recovered after trial.

26 13. Without affecting the finality of this Judgment in any way, this Court hereby
27 retains continuing jurisdiction regarding: (a) implementation of this Settlement and any award or
28 distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the

1 Settlement Fund; (c) hearing and determining applications for attorneys' fees, interest, and
2 expenses in the Action; and (d) all Parties hereto for the purpose of construing, enforcing, and
3 administering the Stipulation.

4 14. Any Plan of Allocation submitted by Lead Counsel or any order entered regarding
5 any attorneys' fees or Litigation Expenses or award to Lead Plaintiff shall in no way disturb or
6 affect this Judgment, and shall be considered in a separate order from this Judgment.

7 15. The Court finds that during the course of the Action, the Settling Parties and their
8 respective counsel at all times complied with the requirements of Federal Rule of Civil
9 Procedure 11.

10 16. Without further approval from the Court, Lead Plaintiff and the Defendants are
11 hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or
12 any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent
13 with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in
14 connection with the Settlement. Without further order of the Court, the Settling Parties may
15 agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

16 17. If the Settlement is terminated as provided in the Stipulation or the Effective Date
17 of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void,
18 and be of no further force and effect, except as otherwise provided by the Stipulation, and this
19 Judgment shall be without prejudice to the rights of Lead Plaintiff, the other Settlement Class
20 Members, and Defendants, and the Parties shall revert to their respective positions in the Action
21 as of July 8, 2020, as provided in the Stipulation.

22 18. There is no just reason to delay the entry of this Judgment as a final judgment in
23 this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this
24 final judgment in this Action.

25 IT IS SO ORDERED.

26
27 DATED: February 16, 2012



28
Honorable Edward J. Davila
United States District Judge